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SECURITY COUNCIL
Forty-eighth year

Letter dated 19 May 1993 from the Chargé d'affaires a.i. of the Permanent Mission of Yugoslavia to the United Nations addressed to the Secretary-General

I have the honour to transmit herewith the letter from His Excellency Mr. Vladislav Jovanović, Deputy Prime Minister and Minister for Foreign Affairs of the Federal Republic of Yugoslavia, addressed to you (see annex).

I should be grateful if you would have the text of the present letter and its annex circulated as an official document of the General Assembly, under item 146 of the preliminary list, and of the Security Council.

(Signed) Dragomir DJOKIĆ
Ambassador
Chargé d'affaires a.i.

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* Reissued for technical reasons.

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ANNEX

Letter dated 17 May 1993 from the Deputy Prime Minister and Minister for Foreign Affairs of the Federal Republic of Yugoslavia to the Secretary-General

Following your report of 3 May 1993 (S/25704) relating to paragraph 2 of Security Council resolution 808 (1993) of 22 February 1993, I am writing to apprise you of the position of the Yugoslav Government.

The establishment of an ad hoc international tribunal by the Security Council for the prosecution of persons responsible for grave breaches of international humanitarian law committed in the territory of the former Yugoslavia since 1991 is a precedent in international law and the work of the United Nations.

Yugoslavia considers that all perpetrators of war crimes committed in the territory of the former Yugoslavia should be prosecuted and punished under national laws, which are harmonized with international law and by competent judicial authorities, in accordance with the principle of territorial jurisdiction.

Since Yugoslavia has already accepted the jurisdiction of international commissions for the investigation of war crimes, which has not been the case with other States, this constitutes additional pressure by the international community on the work of its national judicial authorities engaged in the prosecution and punishment of perpetrators of war crimes.

Yugoslavia is one of the advocates of the idea concerning the establishment of a permanent international tribunal and respect for the principle of equality of States and universality and considers, therefore, the attempts to establish an ad hoc tribunal discriminatory, particularly in view of the fact that grave breaches of international law of war and humanitarian law have been committed and are still being committed in many armed conflicts in the world, whose perpetrators have not been prosecuted or punished by the international community (Korea, Viet Nam, Algeria, Cambodia, Lebanon, Afghanistan, the Belgian Congo, Iraq, Panama etc.). War crimes are not committed in the territory of one State alone and are not subject to the statute of limitations, so that the selective approach to the former Yugoslavia is all the more difficult to understand and is contrary to the principle of universality.

Yugoslavia has its doubts about the impartiality of the ad hoc tribunal, particularly because of the one-sided approach of the United Nations Security Council to the responsibility for armed conflicts in the territory of the former Yugoslavia and the fact that numerous initiators and advocates of the idea of its establishment have openly stated that this was going to be a tribunal for Serbs. Besides, reports of various international commissions investigating war crimes are biased and unsubstantiated.

In view of the fact that, under the Charter of the United Nations, the Security Council has no mandate to set up such a tribunal or to adopt its statute, it is quite legitimate to question the legal basis for the establishment of the ad hoc tribunal. This is borne out by the opinions of many States and a number of draft tribunal statutes, including the draft of the Conference on Security and Cooperation in Europe (CSCE), to the effect that such a tribunal could be established only by a convention or as a result of decisive influence of the United Nations General Assembly.

In the report by the Secretary-General of 3 May 1993, submitted under paragraph 2 of Security Council resolution 808 (1993), it is said that the international tribunal has been set up on the basis of Chapter VII and Article 29 of the United Nations Charter (S/25704, sect. I).

Yugoslavia wishes to reiterate that the Security Council has no mandate to establish an international tribunal, nor does Chapter VII of the United Nations Charter provide for the establishment of that tribunal. Invocation of Article 29 of the United Nations Charter is legally unfounded and arbitrary, since Article 29 only provides that the Security Council may establish subsidiary organs as it deems necessary for the performance of its functions. It is obvious that such a tribunal is not a subsidiary organ of the Security Council. No independent tribunal, particularly an international tribunal, can be a subsidiary organ of any body, including the Security Council.

The ongoing drive to establish an international tribunal is politically motivated and without precedent in international legal practice, so much so since members of the international community have not been able to agree on the establishment and statute of an international criminal court for decades. The proposed statute of the international tribunal is inconsistent and replete with legal lacunae to the extent that makes it unacceptable to any State cherishing its sovereignty and dignity.

I would like to recall that the international community has held Yugoslav criminal legislation and its judiciary in very high esteem, inter alia, because it has adopted all solutions and achievements of modern criminal law and all international conventions pertaining to international humanitarian law.

The establishment of an ad hoc tribunal is also contrary to the provisions of the Constitution of the Federal Republic of Yugoslavia, which prohibits extradition of Yugoslav nationals. Yugoslavia is not convinced of the need that it alone should amend its constitutional provisions pertaining to extradition, which are otherwise contained in appropriate legal documents of other States as well, even less so if the same obligation is not provided also for other members of the international community.

Yugoslavia is a signatory State of all international conventions in the field of international humanitarian law, its legislation is in full harmony with the provisions of those conventions and it is prepared to comply fully with its international commitments under these conventions.

In advising you of the remarks of the Federal Government on the proposals contained in your report, I wish to inform you that any decision of the Security Council on this issue related to Yugoslavia will have to be approved by the Parliament of the Federal Republic of Yugoslavia as the supreme authority under its Constitution.